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Shipman v. *Bank of N. Y.*, 126 N. Y. 318; *Phillips* v. *Mercantile Nat. Bank*, 140 N. Y. 556; *Armstrong* v. *Nat. Bank*, 46 Ohio St. 512; *Lane* v. *Krekle*, 22 Iowa, 399; *Kohn* v. *Watkins*, 26 Kas. 691; *Phillips* v. *im Thurn*, L. R. 1 C. P. 463.

IMPLIED POWER OF SALE. — A case put by Lord Justice Lindley in delivering his opinion in *Henderson* v. *Williams* (11 Times Law Rep. 148), decided by the Court of Appeal last December, presents a most interesting question in the law of sale. Suppose R, a rascal, by fraudulently representing that he is the agent of X, negotiates a sale with A, who believes he is selling to X. A then notifies the warehouseman, who has possession of the goods, to hold them subject to the order of R, and a *bona fide* purchaser, relying on the warehouseman's statement that he so holds them, pays cash to R for the goods. Has title passed from the original owner to the *bona fide* purchaser? Lord Justice Lindley was of opinion that it had.

On the facts as they appear in the report, namely, that A thought he was selling to X through R as agent, it is clear that no title would have passed if A himself had delivered possession to R. *Cundy* v. *Lindsay*, 3 A. C. 459; *Rodliff* v. *Dallinger*, 141 Mass. 1; *Collins* v. *Ralli*, 20 Hun, 246; s. c. 85 N. Y. 637. It would have been a case of larceny by trick, and not of obtaining goods by false pretences. Does the fact that A authorized the warehouseman to deliver possession for him make any difference? This, it would seem, must depend on whether A's intention, as manifested by his overt act in so authorizing the warehouseman, was to give R not only the right of possession but also a general power of sale. It may, perhaps, be safely admitted that he did intend to give R power to dispose of the goods to such person as X, the supposed principal, should direct. But this doubtless would not be enough to enable R to pass title to a *bona fide* purchaser. One must go a step farther and say that he intended to give R a general power of sale. If this is conceded it is clear that the *bona fide* purchaser from R would get title, for R would then in effect be a trustee for X. Can this last step safely be taken? For aught that the purchaser knows, R may be agent for a principal who allows him to dispose of the goods only to such person as he, the principal, shall approve of. This is a perfectly possible transaction, and perfectly consistent with R's holding a delivery order on the warehouseman. Why, then, has the purchaser the right to suppose that it is not the real state of affairs? Why has he more right to suppose that R has a general power of sale, and to rely on such supposition, than one has to suppose that a person in possession has title and can pass it? The warehouseman is of course protected in delivering to the holder's order, because he was given authority to do so, but this seems very different from saying that, judged by his overt act, the owner must have intended to give R a general power of sale. Lord Lindley's view, it may be remarked, is not the less interesting in that it is *contra* to the result reached in the well known case of *Kingsford* v. *Merry*, 1 H. & N. 503.

The actual suit before the Court of Appeal was against the warehouseman, and as he had attorned to the *bona fide* purchaser, as well as represented that he held to the order of the rascal, the court decided that he was estopped by reason of such attornment, which is undoubtedly law. *Stonard* v. *Dunkin*, 2 Camp. 344; *Knights* v. *Wiffen*, L. R. 5 Q. B. 660. It must be admitted that this furnishes a strong practical argument in

favor of the view of Lindley, L. J., for if title has not passed as between the original owner and the *bona fide* purchaser, but has passed by estoppel as between the warehouseman and the latter, we should have a curious state of affairs. If the warehouseman knowing he was estopped gave up the goods to the purchaser, or if the purchaser replevied them, there would be nothing to prevent the original owner from bringing trover or replevin against the purchaser, for *ex hypothesi* the title has not passed as between them, and so in that case the loss would fall on the purchaser. If on the other hand the warehouseman, being indemnified by the owner, refused to give up the goods, and the purchaser brought trover, the final loss would fall on the original owner.

INDICTMENT AND INFORMATION. — The defects of our grand jury as a means of beginning a criminal action have long been recognized, but the difficulties in the way of any radical change are by no means insignificant. In some States the power of district attorneys or County Prosecutors to begin proceedings by information is extensive, and in two at least, Connecticut and California, this power is coming into frequent exercise. In Connecticut the prosecution of any offence not punishable by death or imprisonment for life, in California the prosecution of any offence whatever may begin by information (Conn. Gen. St. §§ 1599, 1610. Cal. Const., Art. 1, sect. 8. Deering's Penal Code, §§ 809, 888). It will be interesting and profitable to observe the results of this experiment. That such a procedure has many advantages is obvious. It is quickly set in motion, errors are easily remedied, and the whole course of proceedings much accelerated. On the other hand the power thus given the district attorney is very great, and should have ample guaranties against misuse. It is not likely that we shall evolve out of this an office much like that of the Public Prosecutor (*Staatsanwalt*, *Procureur de la Republique*) on the Continent of Europe. There seems to be no disposition here to intrust any single official with the sole power and duty of instituting criminal proceedings. The grand jury is probably in no danger of being abolished, or of having the scope of its action much limited by law. But it is not improbable that the near future will see some considerable extension of the information as a concurrent alternative process. If this alternative process is wisely regulated, it is pretty certain that the grand jury will have little to do.

The grand jury originated at a time when the administrative machinery for the detection of crime was very crude and defective. Its retention in later centuries was chiefly due to political reasons. It furnished a tolerably safe protection against governmental tyranny and oppression. That was the light in which the founders of our American judicial systems still regarded it. But the past century has made great political changes, here and in England. We no longer fear the encroachments of a government above the people. As a defence against judicial usurpation the grand jury is no longer necessary. Viewed by itself it is seen to possess many defects. It is a secret, irresponsible body, offering some opportunity for the gratification of private malice or revenge. It is usually composed of men not well fitted to discharge such duties as rest upon it. It is swayed by popular passion and prejudice. We have all seen how tenderly it deals with lynchers. Its findings are frequently influenced by local political views. It cannot meet often, and when it does,